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(h) A handler may grind raisins which do not meet the minimum grade standards prescribed in paragraphs (a) through (g) of this section because of mechanical damage or sugaring, into a raisin paste.

[49 FR 33994, Aug. 28, 1984, as amended at 50 FR 35772, Sept. 4, 1985; 53 FR 34715, Sept. 8, 1988]

Subpart—Antitrust Immunity and Liability

§ 989.801 Restrictions applicable to committee personnel.

Members and employees of the Raisin Administrative Committee are immune from prosecution under the United States antitrust laws only insofar as their conduct in administering the Raisin Marketing Order is authorized by the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601 *et seq.*, or the provisions of the order. Under the antitrust laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. For example, Committee members and employees have no authority to participate, either directly or indirectly, whether on an informal or formal, written or oral basis, in any bilateral or international undertaking or agreement with any competing foreign producer or seller or with any foreign government, agency, or instrumentality acting on behalf of competing foreign producers or sellers to (a) raise, fix, stabilize, or set a floor for raisin, sultana, or currant prices, or (b) limit the quantity or quality of raisins, sultanas, or currants imported into or exported from the United States. Participation in any such unauthorized agreement or joint undertaking could result in prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and could also result in expulsion of members from the Committee or termination of employment with the Committee.

[46 FR 39984, Aug. 6, 1981]

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**PART 993—DRIED PRUNES
PRODUCED IN CALIFORNIA**

Subpart—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 26 FR 476, Jan. 19, 1961, unless otherwise noted.

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DEFINITIONS

§ 993.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary under the Act.

§ 993.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

§ 993.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 993.4 Area.

Area means the State of California.

§ 993.5 Prunes.

Prunes means and includes all sun-dried or artificially dehydrated plums, of any type or variety, produced from plums grown in the area, except: (a) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver prunes; and (b) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packaging, without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as “high moisture content prunes,” but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation.

§ 993.6 Non-French prunes.

Non-French prunes means prunes commonly known as Imperial, Sugar, Robe de Sargent, Burton, Standard, Jefferson, Fellenberg, Italian, President, Giant, and Hungarian (Gross), produced from such varieties of plums. This definition may be modified by the committee with the approval of the Secretary.

§ 993.7 French prunes.

French prunes means: (a) Prunes produced from plums of the following varieties of plums: French (Prune d’Agen, Petite Prune d’Agen), Coates (Cox, Double X, Saratoga); and (b) any other prunes which possess taste, flesh texture, and other characteristics similar to those of the prunes named in this section.

§ 993.8 Natural condition prunes.

Natural condition prunes means prunes which have not been processed.

§ 993.9 Processed prunes.

Processed prunes means prunes which have been cleaned, or treated with water or steam, by a handler.

§ 993.10 Standard prunes.

Standard prunes means any lot of natural condition prunes meeting the applicable grade and size standards prescribed pursuant to § 993.49 other than pursuant to § 993.49(c).

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 861, Jan. 20, 1972]

§ 993.11 Standard processed prunes.

Standard processed prunes means any lot of processed prunes meeting the applicable grade and size standards prescribed pursuant to § 993.50.

§ 993.12 Substandard prunes.

Substandard prunes means any lot of processed or natural condition prunes failing to meet the applicable grade and size standards prescribed pursuant to §§ 993.49 and 993.50 other than pursuant to § 993.49(c).

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 861, Jan. 20, 1972]

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§ 993.13 Handle.

Handle means to receive, package, sell, consign, transport, or ship (except as a carrier of prunes owned by another person), or in any other way to place prunes in the current of the commerce within the area or from such area to any point outside thereof: *Provided*, That this term shall not include: (a) Sales or deliveries of prunes by a producer or dehydrator to a producer, dehydrator, or handler within the area; (b) the receiving of prunes by a producer or dehydrator from a producer or dehydrator; and (c) receipts, sales, or shipments of prunes already handled by another person other than pursuant to § 993.50(f).

§ 993.14 Handler.

Handler means any person who handles prunes.

§ 993.15 Dehydrator.

Dehydrator means any person who produces prunes by drying or dehydrating plums by means of sun-drying or artificial heat.

§ 993.16 Producer.

Producer means any person who is engaged, in a proprietary capacity, in growing plums for drying or dehydrating into prunes.

§ 993.17 Ton.

Ton means a short ton of 2,000 pounds.

§ 993.18 Grade.

Grade means the classification of prunes for quality and condition according to the grading specifications established pursuant to the provisions of this subpart.

§ 993.19a Size.

Size means either (a) the number of prunes contained in a pound and may be referred to in terms of size ranges, or (b) the diameter of a round opening, expressed in multiples of one thirty-second of an inch, through which prunes pass freely.

[37 FR 861, Jan. 20, 1972]

§ 993.19b Undersized prunes.

Undersized prunes means prunes which pass freely through a round opening of a specified diameter.

[37 FR 861, Jan. 20, 1972]

§ 993.20 Crop year.

Crop year means the 12-month period beginning August 1 of any year and ending July 31 of the following year.

§ 993.21 Domestic.

Domestic means the United States, Canal Zone, Puerto Rico, Virgin Islands, and Canada.

§ 993.21a Proper storage.

Proper storage means storage of such character as will maintain prunes in the same condition as when received by a handler, except for normal and natural deterioration and shrinkage.

[30 FR 9798, Aug. 6, 1965]

§ 993.21b Trade demand.

(a) *Domestic trade demand.* The quantity of prunes which the commercial trade will acquire from all handlers during a crop year for distribution in domestic markets for human consumption as prunes and prune products.

(b) *Foreign trade demand.* The quantity of prunes which the commercial trade will acquire from all handlers during a crop year for distribution in other than domestic markets for human consumption as prunes and prune products.

[30 FR 9798, Aug. 6, 1965]

§ 993.21c Salable prunes.

Salable prunes means those prunes which are free to be handled pursuant to any salable percentage established by the Secretary pursuant to § 993.54, or, if no reserve percentage is in effect for a crop year, all prunes, excluding the quantity of undersized prunes determined pursuant to § 993.49(c), received by handlers from producers and dehydrators during that year.

[46 FR 61637, Dec. 18, 1981]

§ 993.21d Reserve prunes.

Reserve prunes means those prunes which must be withheld in satisfaction

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of a reserve obligation arising from application of a reserve percentage established by the Secretary pursuant to § 993.54.

[30 FR 9798, Aug. 6, 1965]

§ 993.22 Consumer package.

Consumer package means: (a) Any container of prunes holding less than 10 pounds of standard processed prunes or standard prunes; or (b) any container holding less than 10 pounds of prunes and other dried fruit if more than 60 percent of the net weight of mixed dried fruit in the lot consists of standard processed prunes or standard prunes.

§ 993.23 Part and subpart.

Part means the order regulating the handling of dried prunes produced in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of dried prunes produced in California shall be a *subpart* of such part.

PRUNE MARKETING COMMITTEE

§ 993.24 Establishment and membership.

A Prune Marketing Committee (herein referred to as the "Committee"), consisting of 22 members with an alternate member for each such member, is hereby established to administer the terms and provisions of this part, of whom with their respective alternates, 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. Committee membership shall be allocated in accordance with the following grouping with the alternate positions identically allocated:

(a) Three handler members to represent handlers who are cooperative marketing associations of producers (referred to in this part as "cooperative handlers");

(b) Three handler members to represent handlers other than cooperative handlers (referred to in this part as "independent handlers");

(c) One handler member to represent handlers who are cooperative handlers or independent handlers, whichever of such handlers handled as first handlers more than 50 percent of the prunes

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handled by all handlers during the crop year preceding the year in which nominations are made;

(d) Fourteen producer members to be selected from and to represent producers who are members of cooperative marketing associations (referred to in this part as "cooperative producers") and producers other than "cooperative producers" (referred to in this part as "independent producers"); the number of the producer members for the cooperative producer group or the independent producer group, as the case may be, shall be in the same proportion, as near as practicable, to the total of 14, as the tonnage of prunes handled by the respective group of cooperative handlers or independent handlers as first handlers during the crop year preceding the year in which nominations are made is to the total tonnage of prunes handled by all handlers as first handlers.

(e) The public member and alternate shall have no financial interest in the prune industry.

[26 FR 476, Jan. 19, 1961, as amended at 46 FR 61636, Dec. 18, 1981]

§ 993.25 Term of office.

The term of office of members, and their respective alternates, shall be two years, ending on May 31 of even numbered years, and any later date which may be necessary for the selection and qualification of their respective successors.

§ 993.26 Selection.

Selection of members of the committee, and their respective alternates, shall be made in the appropriate number specified in § 993.24, by the Secretary from nominees nominated pursuant to this part or, in the discretion of the Secretary, from other eligible persons.

§ 993.27 Eligibility.

Producer members of the Committee shall be at the time of their selection, and during their term of office, producers in the group, for which selected and if to represent a district also producers in the district for which selected, and, except for producer members representing cooperative producers, shall not be engaged in the handling of

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prunes either in a proprietary capacity or as a director, officer, or employee. Handler members of the Committee shall be handlers in the group they represent or directors, officers, or employees of such handlers. These eligibility requirements shall not apply to the public member and alternate member.

[46 FR 61636, Dec. 30, 1981]

§ 993.28 Nominees.

(a) For the purpose of obtaining nominations for producer members to represent independent producers, the Committee shall, with the approval of the Secretary, divide the area into districts giving, insofar as practicable, equal representation to numbers of independent producers and production of prune tonnage by such producers. The number of districts shall be equal to the number of such producer members or seven, whichever is the lesser. Candidates for nomination by independent producers from the various districts shall be obtained at meetings convened by the committee. Following such meetings, the committee shall prepare a separate ballot for each of the districts, or a joint ballot for two or more districts, containing (1) the names of the candidates for each district involved and (2) provision for write-in candidates. The ballot shall be mailed to each independent producer of record in each district. The voting procedure (including the casting of the ballot by mail addressed to the committee), and tabulation of votes shall be in accordance with rules and regulations prescribed by the committee, with the approval of the Secretary. Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district, he shall elect in which of such districts he will vote and notify the committee as to his choice. Whenever the number of producer members to represent independent producers during the ensuing term of office is to exceed seven, one nominee shall be nominated by independent producers in each of the seven districts and an additional nominee for

each member in excess of the seven members shall be nominated, without reference to districts, by such seven nominees. The committee shall recommend the establishment of districts, or any changes therein, to the Secretary prior to January 31 of each year in which nominations are made.

(b) Before April 16 of each even-numbered year nominations of producer members to represent cooperative producers and handler members to represent cooperative handlers shall be submitted to the Secretary by cooperative marketing associations engaged in the handling of prunes. The number of cooperative producer members and handler members to be nominated by each cooperative marketing association shall bear, as near as practicable, the same percentage as each cooperative marketing association's tonnage of prunes handled as first handler thereof is to the total tonnage handled by all cooperative marketing associations during the preceding crop year.

(c) In any year in which nominations are made following a crop year during which the tonnage of prunes handled by independent handlers as first handlers exceeded the tonnage of prunes handled by cooperative handlers as first handlers, nominees for member positions to represent independent handlers shall be nominated as follows:

(1) Each of the two independent handlers who handled during such preceding crop year, the two largest percentages of the prune tonnage handled by all independent handlers shall nominate from their respective organizations, one nominee for a handler member and one for an alternate member;

(2) Three independent handlers who handled during such preceding crop year the next three largest percentages of the prune tonnage handled by all independent handlers shall nominate from among their organizations, one nominee for a handler member and one for an alternate member;

(3) All other independent handlers who handled the remaining percentage of such prune tonnage shall nominate from their organizations, one nominee for a handler member and one for an alternate member.

In any year in which nominations are made following a crop year during

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which the tonnage of prunes handled by cooperative handlers as first handlers exceeded the tonnage of prunes handled by independent handlers as first handlers, nominees for two member and alternate positions to represent the independent handlers referred to in paragraph (c)(1) of this section shall be nominated in accordance with said paragraph (c)(1), and one nominee for the member and one for the alternate position to represent all other independent handlers shall be nominated by the handlers referred to in paragraph (c) (2) and (3) of this section and the votes of such handlers shall be weighted by the tonnage of prunes handled during the preceding crop year by the respective handlers.

(d) The committee shall establish with the approval of the Secretary, the procedures by which such nominations, other than by cooperative marketing associations engaged in the handling of prunes, shall be obtained and shall submit such nominations to the Secretary before April 16 of the year in which nominations are made. In the event the committee determines that any nominating procedure specified in this section does not result in equitable representation, it may establish, with the prior approval of the Secretary, such modifications as will tend to assure such representation.

(e) The producer and handler members of the Committee selected for a new term of office shall nominate a public member and alternate member at the first meeting following their selection.

[31 FR 9713, July 19, 1966, as amended at 46 FR 61636, Dec. 18, 1981]

§ 993.29 Alternates.

An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified. Except as otherwise specifically provided in this subpart the provisions of this part applicable to members also apply to alternate members.

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§ 993.30 Failure to nominate.

If a nomination for any position on the committee is not received by the Secretary by May 1, the Secretary may select an eligible individual without regard to nominations.

§ 993.31 Acceptance.

Each person selected as a member or alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 15 days after receiving notice of his selection.

§ 993.32 Vacancies.

In the event of any committee vacancy occasioned by the removal, resignation, disqualification, or death of any member, or in the event of the failure of any person selected as a member or alternate member to qualify, a successor for the unexpired term shall be nominated within 60 calendar days thereof. Such nominations shall be made in the manner provided for in this subpart, insofar as applicable, except that nominations of nominees for a producer member position to represent independent producers may, at the discretion of the committee, be made to the committee by the incumbent producer members of the committee who represent independent producers.

§ 993.33 Voting procedure.

Decisions of the Committee shall be by majority vote of the members present and voting and a quorum must be present: *Provided*, That decisions on marketing policy, grade or size regulations, pack specifications, salable and reserve percentages, and on any matters pertaining to the control or disposition of reserve prunes or to prune plum diversion pursuant to § 993.62, including any delegation of authority for action on such matters and any recommendation of rules and procedures with respect to such matters, including any such decision arrived at by mail or telegram, shall require at least 14 affirmative votes. A quorum shall consist of at least 13 members of whom at least 8 must be producer members and at

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least 4 must be handler members. Except in case of emergency, a minimum of 5 days notice must be given with respect to any meeting of the Committee. In case of an emergency, to be determined within the discretion of the chairman of the Committee, as much notice of a meeting as is practicable in the circumstances shall be given. The Committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption.

[46 FR 61637, Dec. 18, 1981]

§ 993.34 Expenses.

The members of the committee, and alternates when acting as members, or when alternates' expenses are authorized by the committee, shall serve without compensation but shall be allowed their expenses.

[30 FR 9798, Aug. 6, 1965]

§ 993.35 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this subpart;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 993.36 Duties.

The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, dehydrator, or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To make, subject to the prior approval of the Secretary, scientific and other studies, and assemble data on the

producing, handling, shipping, and marketing conditions relative to prunes, which are necessary in connection with the performance of its official duties;

(d) To select, from among its members, a chairman and other appropriate officers, and to adopt such rules and regulations for the conduct of the business of the committee as it may deem advisable;

(e) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of such persons;

(f) To submit to the Secretary not later than the fourth Tuesday of July of each year, a budget of its anticipated expenditures and the recommended rate of assessment for the ensuing crop year, and the supporting data therefor;

(g) To submit to the Secretary such available information with respect to prunes as the committee may deem appropriate, or as the Secretary may request;

(h) To prepare and submit to the Secretary quarterly statements of the financial operations of the committee, exclusive of reserve prune operations, and to make such statements, together with the minutes of the meetings of said committee, available for inspection at the offices of the committee by producers, dehydrators, and handlers;

(i) To prepare and submit to the Secretary annually, as soon as practicable after the end of each crop year and at such other times as the committee may deem appropriate or the Secretary may request, a statement of the committee's financial operations with respect to reserve prunes for such crop year and to make such statement available at the offices of the committee for inspection by producers, dehydrators, and handlers;

(j) To cause the books of the committee to be audited by a certified public accountant at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request, and two copies of each such audit report shall be submitted to the Secretary and a

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copy which does not contain confidential data shall be available for inspection at the offices of the committee, by producers, dehydrators, and handlers;

(k) To give the Secretary the same notice of meetings of the committee as is given to the members of the committee;

(l) To give producers, dehydrators, and handlers reasonable advance notice of meetings of the committee, and to maintain all such meetings open to such persons;

(m) To investigate compliance with the provisions of this subpart and with any rules and regulations established pursuant to such provisions; and

(n) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

[30 FR 9798, Aug. 6, 1965, as amended at 37 FR 861, Jan. 20, 1972]

§ 993.37 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of prunes. The expense of such projects shall be paid from funds collected pursuant to § 993.81.

MARKETING POLICY

§ 993.41 Marketing policy.

(a) On or before the first Tuesday of each July, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy for the ensuing crop year. If it becomes advisable to modify such policy, because of changed demand, supply, or other conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity to producers, dehydrators, and handlers.

(b) In formulating its marketing policy for the ensuing crop year, the com-

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mittee shall consider and shall include in its report to the Secretary, the following estimates (natural condition basis) and recommendations:

(1) The carryover of salable prunes as of August 1;

(2) The carryover of reserve prunes as of August 1;

(3) The grade and size composition of the salable and reserve carryovers;

(4) The quantity of prunes to be produced without regard to possible diversions of prune plums by producers;

(5) The probable quality and prune sizes in the crop;

(6) The domestic trade demand by uses of prunes;

(7) The foreign trade demand by countries or groups of countries;

(8) The desirable carryout of salable prunes at the end of the ensuing crop year;

(9) The quantity of undersized prunes in the crop, itemized as to French prunes and non-French prunes;

(10) The quantity of prunes to be withheld as reserve prunes so as to protect against errors of estimation and permit orderly marketing of the supply;

(11) The recommended salable and reserve percentages;

(12) The quantity of prune plums, dried weight basis, deemed desirable to be diverted pursuant to § 993.62;

(13) Any recommended change in regulations pursuant to §§ 933.49 to 993.53, inclusive;

(14) The probable assessable tonnage for the purposes of § 993.81; and

(15) The current prices for prunes, the trend and level of consumer income, whether producer prices are likely to exceed parity, and such other factors as may have a bearing on the marketing of prunes or the administration of this part.

[30 FR 9798, Aug. 6, 1965, as amended at 37 FR 862, Jan. 20, 1972]

PROHIBITION ON HANDLING

§ 993.48 Regulation.

No handler shall handle prunes except in accordance with the provisions of this part.

[30 FR 9799, Aug. 6, 1965]

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GRADE AND SIZE REGULATIONS

§ 993.49 Incoming regulation.

(a) No handler shall receive prunes from producers or dehydrators, other than substandard prunes and undersized prunes, unless such prunes meet the minimum standards for natural condition prunes set forth in §993.97 (Exhibit A), or as such standards may be modified, or the more restrictive grade regulation established pursuant to this section, and then in effect: *Provided*, That no handler shall receive any prunes (including substandard prunes and undersized prunes) from producers or dehydrators unless such prunes have been properly dried and cured in original natural condition, without the addition of water, and are free from active insect infestation, so that they are capable of being received, stored, and packed without material deterioration or spoilage. Any "high moisture content prunes," as described in the exception in §993.5(b), in the possession of a handler, shall be held separate and apart from any prunes held by him. If such "high moisture content prunes" are dried or dehydrated to a point where they are capable of being stored, without material deterioration or spoilage, unrefrigerated or not otherwise artificially preserved, they shall be deemed, at that time, to have been received by such handler as prunes, and shall be subject to all of the conditions and restrictions of this subpart.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations or more restrictive grade regulations with respect to prunes that may be received by a handler from producers and dehydrators whenever he finds that such action would tend to effectuate the declared policy of the act.

(c) In no crop year shall a handler receive from producers or dehydrators prunes, other than as undersized prunes, which pass freely through a round opening with a diameter as follows: For French prunes 23/32 of an inch, and for non-French prunes 28/32 of an inch: *Provided*, That the Secretary upon a recommendation of the Committee, may establish larger openings whenever it is determined that supply conditions for a crop year warrant such

regulation. The quantity of undersized prunes in any lot received by a handler from a producer or dehydrator shall be determined by the inspection service and entered on the applicable inspection certificate.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972; 46 FR 61637, Dec. 18, 1981]

§ 993.50 Outgoing regulation.

(a) Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of prunes which fail to meet the applicable minimum standards set forth in §993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations, pack specifications, or more restrictive grade regulations with respect to prunes that may be shipped or otherwise disposed of by a handler if such action would tend to effectuate the declared policy of the act. If a more restrictive grade regulation is established in connection with §993.97 (Exhibit A) it shall insofar as practicable apply comparably to both natural condition prunes and processed prunes. When pack specifications are in effect, no handler shall ship prunes in consumer packages, unless such prunes are identified by an appropriate label, seal, stamp, or tag affixed to such container by the handler showing the size of prunes in the lot from which the container was packed. In order to effectuate such orderly marketing of prunes as will be in the public interest, whether prices are above or below parity, no handler shall use descriptive terms in a manner inconsistent with that set forth in this subpart or in any pack specifications or other regulation issued by the Secretary pursuant to this subpart.

(c) Non-French prunes: No handler shall ship or otherwise make final disposition of any lot of standard prunes or standard processed prunes of the non-French varieties or any lot which includes non-French prunes in excess of a tolerance to be prescribed by the Secretary on recommendation of the Committee, unless the average count of such non-French prunes contained in

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any such lot is 40 or less per pound. However, under safeguards to be established by the Committee, any lot containing non-French prunes with an average size count of more than 40 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. A tolerance as to the permitted deviation of sizes about the average count shall be prescribed by the Secretary, upon recommendation of the Committee.

(d) French prunes: No handler shall ship or otherwise make final disposition of any lot of French prunes for human consumption as prunes, or any lot of mixed dried fruit containing French prunes for human consumption as mixed dried fruit, unless the average count of French prunes contained in any such lot is 100 or less per pound. However, under safeguards to be established by the Committee, any lot containing French prunes with an average size count of more than 100 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. In determining whether any such lot conforms to this minimum size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes shall not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points. The Secretary may, upon the basis of the recommendation and information submitted by the Committee and other available information, modify this tolerance for uniformity of size.

(e) No handler shall ship or otherwise make final disposition of any lot of substandard prunes except for use as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption, or for use in non-human consumption outlets: *Provided*, That any such prunes which are shipped or otherwise disposed of for human consumption shall meet the minimum standards prescribed in II C (1), (2), and (3) of § 993.97 or as such standards as may pursuant to § 993.52 be modified. The committee shall issue any such rules and regula-

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tions as may be necessary to insure such uses.

(f) Notwithstanding the restrictions contained in this section, any handler may transfer prunes from one plant owned by him to another plant owned by him within the area without having an inspection made as provided for in § 993.51. Any handler may ship prunes from his plant to another handler's plant within the area without having an inspection made as provided for in § 993.51, but a report of such inter-handler transfer shall be made promptly by the transferring handler to the committee. The receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of this section and of § 993.51.

(g) No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes. However, such handler may, at the direction and under the supervision of the Committee, dispose of such quantity of prunes in nonhuman consumption outlets. Prunes so disposed of shall be of the same variety as, and reasonably comparable in size, to such undersized prunes. The handler shall cause the inspection service to make a determination whether the prunes disposed of by the handler in nonhuman consumption outlets meet such requirements. In making the determination with respect to comparability in size, the inspection service shall apply a tolerance permitting a deviation from the size of the applicable opening established pursuant to § 993.49(c). Any such tolerance, together with any rules and regulations to insure proper disposition of the prunes and that such prunes are reasonably comparable to the undersized prunes so received, shall be established by the Committee with the approval of the Secretary. The quantity of prunes determined pursuant to § 993.49(c) shall not be deemed to be within the handler's quota for salable prunes fixed by the Secretary within the meaning of section 8a(5) of the Act.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972]

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§ 993.51 Inspection and certification.

Each handler shall at his own expense, before or upon the receiving, and before the shipping or disposing of prunes, cause an inspection to be made of such prunes to determine whether they meet the applicable grade and size requirements or the pack specifications, including labeling, effective pursuant to this part. Such handler shall obtain a certificate that such prunes meet the aforementioned applicable requirements and shall submit such certificate, or cause it to be submitted, to the committee. Acceptable certificates shall be those issued by inspectors of the Dried Fruit Association of California. The Secretary may designate another inspection service in the event the services of the Association prove unsatisfactory.

§ 993.52 Modification.

Minimum standards, pack specifications or size regulations, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the declared policy of the act.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972]

§ 993.53 Above parity situations.

The minimum standards, the minimum sizes, including the minimum undersized regulation in § 993.49(c), and the provisions of this part relating to administration shall continue in effect irrespective of whether the estimated season average price for prunes is in excess of the parity level specified in section 2(1) of the act.

[46 FR 61637, Dec. 18, 1981]

RESERVE CONTROL

SOURCE: 30 FR 9799, Aug. 8, 1965, unless otherwise noted.

§ 993.54 Establishment of salable and reserve percentages.

Whenever the Secretary finds, from the recommendations and supporting information supplied by the committee, or from any other available in-

formation, that to establish the percentages of prunes for any crop year which shall be salable prunes and reserve prunes, respectively, or to modify the previously established percentages, would tend to effectuate the declared policy of the act, he shall establish or modify such percentages. The salable and reserve percentages when applied to the natural condition weight of prunes, excluding the quantity of undersized prunes determined pursuant to § 993.49(c), received during the crop year by a handler from producers and dehydrators, plus that diverted tonnage (dried weight natural condition prune basis) on diversion certificates issued pursuant to § 993.62 and credited to or held by him, shall determine the weight of each handler's receipts which are salable prunes and reserve prunes. The total of the salable and reserve percentages shall equal 100 percent. A cooperative marketing association may concentrate the prunes of its producer members before applying the salable and reserve percentages.

[30 FR 9799, Aug. 6, 1965, as amended at 37 FR 862, Jan. 20, 1972]

§ 993.55 Application of salable and reserve percentages after end of crop year.

The salable and reserve percentages established for any crop year shall remain in effect after that crop year until salable and reserve percentages are established for another crop year. After such percentages are established, all reserve obligations shall be adjusted to the newly established percentages.

[46 FR 61637, Dec. 18, 1981]

§ 993.56 Reserve obligation.

Whenever salable and reserve percentages are in effect for any crop year, the reserve obligation of a handler shall approximate the average marketable content of the handler's receipts and shall be a weight of natural condition prunes equal to the reserve percentage applied to the natural condition weight of prunes, excluding the quantity of undersized prunes determined pursuant to § 993.49(c), such handler receives during the crop year from

producers and dehydrators plus that diverted tonnage (dried weight natural condition prune basis) on diversion certificates credited to or held by him which were issued pursuant to § 993.62. However, if the committee determines the requirement as to setaside reflecting average marketable content of receipts is not essential to achieve program objectives for the crop of a particular season, it may be eliminated for that season by the committee, with the approval of the Secretary. As a prerequisite for making this determination, the committee must find that the resultant setaside procedures assure that the trade demand for manufacturing prunes, as well as prunes for consumption as prunes, will be met. The salable prunes permitted to be disposed of by any handler in accordance with the provisions of this part shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

[30 FR 9799, Aug. 8, 1965, as amended at 37 FR 862, Jan. 20, 1972]

§ 993.57 Holding requirement and delivery.

Each handler shall at all times, hold, in his possession or under his control, in proper storage for the account of the committee, free and clear of all liens, the quantity of prunes necessary to meet his reserve obligation, less any quantity: (a) For which he has a temporary deferment pursuant to § 993.58(a); (b) of prune plums (dried weight natural condition basis) diverted pursuant to § 993.62 as shown on diversion certificates held by him, or credited by the committee against his reserve obligation; (c) disposed of by him under a sales contract of the committee; (d) delivered by him to the committee, or to a person designated by it, pursuant to its instructions; and (e) for which he is otherwise relieved by the committee of such responsibility to so hold prunes. No handler may transfer a reserve obligation but any handler may, upon notification to the committee arrange to hold reserve prunes on the premises of another handler or in approved commercial storage, under conditions of proper storage. The committee may, after giving reasonable notice, require a handler to de-

liver to it, or to a person designated by it, f.o.b. handler's warehouse or point of storage, reserve prunes held by him. The committee may require that such delivery consist of natural condition prunes or it may arrange for such delivery to consist of processed prunes.

§ 993.58 Deferment of time for withholding.

(a) Compliance by any handler with the requirement of § 993.57 for withholding reserve prunes may be temporarily deferred to any date desired by the handler, but not later than November 15 of the crop year, upon the execution and delivery by such handler to the committee of a written undertaking that on or prior to the desired date he will have fully satisfied his holding requirement. Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the committee in the amount or amounts specified, conditioned upon full compliance with such undertaking.

(b)(1) Each bond shall be provided by and at the handler's expense, with a surety or sureties acceptable to the committee, and shall be in an amount computed by multiplying the pounds of natural condition prunes for which deferment is desired by the bonding rate. Such bonding rate shall be established by the committee at a level sufficient to achieve the objectives of this part.

(2) In case a handler defaults in meeting his deferred withholding requirement, any funds collected by the committee from the bonding company through such default shall be used by the committee to purchase from handlers a quantity of natural condition prunes, up to but not exceeding the quantity on which default occurred. Purchases shall be made from prunes with respect to which the reserve obligation has been met, and shall be of grades, varieties, or sizes and in such containers as the committee specifies in consideration of available reserve prune outlets. Purchases shall be at prices determined to be appropriate by the committee and if more prunes are offered than required by the committee, it shall make the purchases from various handlers as nearly as practicable in proportion to the quantity of

their respective offerings at the same price. The committee shall dispose of the prunes acquired as soon as practicable in the most favorable reserve prune outlets and shall deposit the proceeds from such sales, less committee expenses in connection with such transaction, with reserve pool funds for distribution to equity holders.

(3) If for any reason the committee is unable to purchase a quantity of prunes as large as the quantity of reserve prunes in default by the handler, any remaining balance of funds received because of the default less expenses of the committee, shall be deposited with reserve pool funds for distribution to equity holders.

(c) A handler who has defaulted on his bond shall be credited on his reserve obligation with, and his holding requirement reduced by, that quantity of prunes represented by the sums collected but not more than the extent of his default.

§ 993.59 Payment to handlers for services.

The committee shall pay handlers for necessary services rendered by them in connection with reserve prunes including, but not limited to, inspection, receiving, storing, grading, and fumigation, in accordance with a schedule of payments and conditions established by the Secretary after recommendation by the committee.

PRODUCER DIVERSION

§ 993.62 Diversion privileges.

(a) *Prune plums.* The words *prune plums* as used in this section mean plums of a variety used in the production of prunes.

(b) *Voluntary principle.* No producer shall be required to divert all or any portion of the prune plums produced by him.

(c) *Authorization.* If, on the basis of a committee recommendation for diversion operations, the availability of governing rules and procedures established by the Secretary after recommendation of the committee, and other information, the Secretary concurs that diversion operations should be permitted, he shall authorize such operations.

(d) *Diversion certificates.* After diversion operations are authorized, and subject to the applicable rules and procedures, any producer may divert prune plums of his own production for eligible purposes and receive from the committee a diversion certificate therefor: *Provided*, That diversion certificates for prune plums diverted by producer members of a cooperative marketing association shall be issued by the committee to the association if it so requests. To the extent permitted by the rules and procedures, the certificate may be submitted to any handler in lieu of reserve prunes and to the same extent the certificate shall entitle the handler to satisfy his reserve obligation. Only to the extent permitted by the rules and procedures, diversion certificates may be transferable among producers and handlers.

(e) *Eligible diversions.* Within such restrictions as may be prescribed in rules and procedures, diversion may be authorized for such dispositions as are not competitive with the normal marketing of prunes and prune products. Such eligible diversions may include: (1) Disposal of prune plums for nonhuman use; (2) leaving prune plums unharvested; and (3) such other methods of diversion as may be authorized. No diversion certificate shall be issued by the committee for prune plums which would not, under normal producer practices, be dried and delivered to a handler.

(f) *Nonparticipation in pool proceeds.* Any prune plums diverted pursuant to this section shall not be included in any reserve pool.

(g) *Payment of costs.* Prior to the issuance of a diversion certificate to a producer or a cooperative marketing association, the producer or association shall pay to the committee fees established to cover costs pertaining to the diversion.

[30 FR 9800, Aug. 6, 1965]

DISPOSITION OF RESERVE PRUNES

§ 993.65 Disposition of reserve prunes.

(a) *Committee's right of disposition.* The committee shall have the power and authority to sell or dispose of any and all reserve prunes (1) to meet demand either (i) as domestic trade demand, or

(ii) as foreign trade demand, or (2) for use in any outlet, defined in rules and procedures, established by the Secretary after recommendation of the committee, noncompetitive with normal outlets for salable prunes.

(b) *Methods of disposition.* The committee may, for any of the purposes of § 993.65(a), offer to sell and sell reserve prunes to handlers for disposition or sale by them in specified outlets. Sale of reserve prunes by the committee to any handler for resale in such outlets or for resale to other persons for sale in such outlets shall be governed by the provisions of a sales agreement, executed by the handler with the committee. The committee may refuse to sell reserve prunes to any handler if the handler violates the terms and conditions of the agreement or other provisions of this part. The committee may sell reserve prunes into any outlet in which direct selling is determined to be more appropriate.

(c) *Offers to sell reserve prunes.* No offer to sell reserve prunes either to handlers or to other persons shall be made by the committee until 5 days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to the terms and conditions of the proposed offer including the basis for determining the handlers' shares: *Provided*, That at any time prior to the expiration of the 5-day period the offer may be made upon the committee receiving from the Secretary notice that he does not disapprove it.

(d) *Transfer of shares.* No handler may transfer a reserve obligation. However, any handler who is authorized by the committee to dispose of reserve prunes may arrange with another handler to dispose of his share of reserve prunes through such other handler. In that event, credit for the reserve disposition shall go to the handler whose reserve prunes are used.

(e) *Distribution of proceeds.* Expenses incurred by the committee for the receiving, handling, holding, or disposing of any quantity of reserve prunes shall be charged against the proceeds of sales of such prunes. Net proceeds from the disposition of reserve prunes shall be distributed by the committee either

directly, or through handlers as agents of the committee, under safeguards to be established by the committee, to persons in proportion to their contributions thereto, or to their successors in interest, with appropriate grade and size differentials as established by the committee. Progress payments may be made by the committee as sufficient funds accumulate. Distribution of the proceeds in connection with the reserve prunes contributed by a cooperative marketing association shall be made to such association, if it so requests.

[30 FR 9800, Aug. 6, 1965]

REPORTS AND BOOKS AND OTHER RECORDS

§ 993.71 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by, and at all times kept in the custody and under the control of one or more employees of the committee, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this subpart.

§ 993.72 Reports of acquisitions, sales, uses, and shipments.

Each handler shall file such reports of his acquisitions, sales, uses, and shipments of prunes, as may be requested by the committee.

§ 993.73 Other reports.

Upon the request of the committee, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this subpart.

§ 993.74 Records.

Each handler shall maintain such records of prunes received, held and disposed of by him, as are prescribed by the committee and needed by it to perform its functions under this subpart.

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Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 993.75 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this subpart, the Secretary, and the Committee through its duly authorized agents, shall have access to any premises where prunes may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any prunes so held by such handler and any and all records of such handler with respect to the holding or disposition of all prunes which may be held or which may have been disposed of by him.

[37 FR 862, Jan. 20, 1972]

EXPENSES AND ASSESSMENTS

§ 993.80 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate.

§ 993.81 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to all salable prunes handled by him as the first handler thereof, his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment per ton fixed by the Secretary. At any time during or after a crop year the Secretary may increase the rate of assessment to cover unanticipated expenses of the committee or a deficit in assessable tonnage.

(b) In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) Any money collected as assessments during any crop year and not expended in connection with the committee's operations may be used by the committee for a period of five months subsequent to such crop year. At the end of such period the committee shall, from funds on hand, refund or credit to handler accounts the aforesaid excess. Each handler's share of such excess funds shall be the amount of assessments he has paid in excess of his pro rata share of the actual net expenses of the committee for the preceding crop year. Any money collected from assessments hereunder and remaining unexpended in the possession of the committee at the termination of this part, shall be distributed in such manner as the Secretary may direct: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[26 FR 476, Jan. 19, 1961, as amended at 30 FR 9800, Aug. 6, 1965]

§ 993.82 Funds.

All funds received by the committee pursuant to the provisions of this part shall be used solely for authorized purposes. The Secretary may, at any time, require the committee or its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 993.83 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to the removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other acts of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 993.84 Personal liability.

No member or alternate member of the committee, or any employee, representative, or agent thereof shall be held personally responsible, either individually or jointly with others, in

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any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 993.85 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 993.86 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 993.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 993.88 Agents.

(a) *Authorization by Secretary.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

(b) *Authorization by committee.* The committee may authorize any person or persons or agency to act as its agent or representative in connection with the provisions of this subpart.

§ 993.89 Effective time.

The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until termi-

nated, or during suspension, in one of the ways specified in § 993.90.

§ 993.90 Termination or suspension.

(a) *Failure to effectuate policy of act.* The Secretary may, at any time, terminate the provisions of this subpart, by giving at least one day's notice by means of a press release or in any other manner which he may determine. The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions of this subpart on or before the fifteenth day of July of any crop year, to be effective at the end of such crop year, whenever he is required to do so by the provisions of section 8c(16)(B) of the act. The Secretary may, at any time he deems it desirable, hold a referendum of producers to determine whether they favor termination of this subpart. However, beginning with 1951, if the Secretary receives a recommendation, adopted by at least a majority vote of the producer members of the committee, requesting the holding of such a referendum, the Secretary shall hold such a referendum: *Provided*, That the Secretary shall not be required to hold such a referendum upon the basis of such a request more than once every two years.

(c) *Termination of act.* The provisions of this subpart shall terminate, in any event, upon the termination of the act.

§ 993.91 Procedure upon termination.

Upon the termination of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustee shall require the concurrence of a majority of the said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary

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or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this subpart. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 993.92 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 993.93 Amendments.

Amendments to this subpart may be proposed from time to time, by any person or by the committee, and may be made a part of this subpart by the procedures provided under the act.

§ 993.97 Exhibit A; minimum standards.

I. Minimum standards for natural condition prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) *Off-color* means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) *Inferior meat condition* means flesh which is fibrous, woody or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) *End cracks* means callous growth cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch

($\frac{3}{8}$ ") but not more than one-half of one inch ($\frac{1}{2}$ ") in length.

(4) *Fermentation* means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) *Skin or flesh damage* means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch ($\frac{3}{8}$ ") in length;

(b) Splits or skin breaks exposing flesh and affecting materially the normal appearance of the prunes;

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality;

(e) Skin damage caused by rain or over-dipping to the extent that the prunes cannot be processed normally without material sloughing of the skin.

(6) *Scab* means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch ($\frac{3}{8}$ ") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch ($\frac{3}{4}$ ") in diameter.

(7) *Burned* means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) *Mold* means a characteristic fungus growth and is self-explanatory.

(9) *Imbedded dirt* means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be removed in normal processing.

(10) *Insect infestation* means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) The tolerance allowance for decay shall not exceed one percent (1%).

(2) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(3) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8%).

(4) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

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(5) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab-burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) Prunes showing obvious live insect infestation shall be fumigated prior to acceptance.

D. Natural condition prunes must be properly dried and cured in original natural condition, without the addition of water, and free from active infestation, so that they are capable of being received, stored and packed without deterioration or spoilage.

II. Minimum standards for processed prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) *Off-color* means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) *Inferior meat condition* means flesh which is fibrous, woody or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) *End cracks* means callous growth, cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch ($\frac{3}{8}$ ") but not more than one-half of one inch ($\frac{1}{2}$ ") in length.

(4) *Fermentation* means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) *Skin or flesh damage* means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch ($\frac{3}{8}$ ") in length;

(b) Splits or skin breaks exposing flesh and materially affecting the normal appearance of French prunes; or markedly affecting the normal appearance of varieties other than the French variety;

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality.

(6) *Scab* means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch ($\frac{3}{8}$ ") in diameter or by unsightly scab of another character ex-

ceeding in the aggregate the area of a circle three-fourths of one inch ($\frac{3}{4}$ ") in diameter.

(7) *Burned* means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) *Mold* means a characteristic fungus growth and is self-explanatory.

(9) *Imbedded dirt* means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be readily removed in washing the fruit.

(10) *Insect infestation* means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) There shall be no tolerance allowance for live insect infestation.

(2) The tolerance allowance for decay shall not exceed one percent (1%).

(3) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(4) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8)%.

(5) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

Subpart—Administrative Rules and Regulations

DEFINITIONS

SOURCE: 26 FR 8278, Sept. 2, 1961, unless otherwise noted.

§ 993.101 Order.

Order means Marketing Agreement No. 110, as amended, and Order No. 993, as amended (§§ 993.1 through 993.97), regulating the handling of dried prunes produced in California, or as they may be further amended hereafter.

Agricultural Marketing Service, USDA

§ 993.128

§ 993.102 Committee.

Committee means the Prune Marketing Committee established pursuant to § 993.24.

[26 FR 8278, Sept. 2, 1961, as amended at 48 FR 57261, Dec. 29, 1983]

§ 993.103 Terms in the order.

Terms defined in the order shall have the same meaning when used in this subpart.

§ 993.104 Lot.

(a) *Lot* for the purposes of §§ 993.49 and 993.149 means any quantity of prunes delivered by one producer or one dehydrator to a handler on which inspection is requested: *Provided*, That a lot shall be limited to (1) the prunes contained in not more than 30 “ton box” containers or (2), if in other containers, not more than 60,000 pounds of prunes. If the prunes in any containers are markedly inferior in quality and condition to other prunes in the proffered lot, the containers shall be segregated into lots of reasonable uniform quality.

(b) *Lot* for the purposes of §§ 993.50 and 993.150 means:

(1) With respect to in-line inspection either (i) the aggregate quantity of prunes of the same size, other than those rejected by inspection, processed in any continuous production of one calendar day and packed during such day in one size and style of container or (ii) the aggregate quantity of prunes of the same size, other than those rejected by inspection, so processed and held in packing containers for later packaging.

(2) With respect to floor inspection either (i) prunes not previously inspected in-line, of the same size, in like containers, bearing the same identification (e.g., brand) if in consumer packages, and offered for inspection as a lot; or (ii) prunes previously inspected in-line but rejected as failing to meet requirements, of the same size, in like containers, processed in any continuous production of one calendar day, and offered for inspection as a new lot.

§ 993.105 Size count.

Size count means the count or number of prunes per pound.

[26 FR 8278, Sept. 2, 1961. Redesignated at 35 FR 11380, July 16, 1970 and 37 FR 15980, Aug. 9, 1972]

§ 993.106 In-line inspection.

In-line inspection means inspection of prunes where samples are drawn from a flow of prunes prior to packaging.

§ 993.107 Floor inspection.

Floor inspection means inspection of prunes where samples are drawn from packaged prunes or from unpackaged prunes that are held in packing containers.

§ 993.108 Non-human consumption outlet.

Non-human consumption outlet means any livestock feeder or manufacturer of inedible syrup, industrial alcohol, animal feed, or other product for non-human use, who has established, to the satisfaction of the committee, that any prunes or prune waste received for a non-human use will be used only within such outlet.

[26 FR 8278, Sept. 2, 1961; 26 FR 8483, Sept. 9, 1961]

§ 993.109 Modified definition of non-French prunes.

The definition of non-French prunes set forth in § 993.6 is modified to read as follows: *Non-French Prunes* means prunes commonly known as Imperial, Sugar, Robe de Sargent, Burton, Standard, Jefferson, Fellenberg, Italian, President, Giant, Hungarian (Gross), and Moyer, produced from such varieties of plums.

[38 FR 22887, Aug. 27, 1973]

PRUNE ADMINISTRATIVE COMMITTEE

§ 993.128 Nominations for membership.

(a) *Districts*. In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. The counties of Glenn and Colusa.

District No. 2. That portion of Sutter County north of a line extending along Bogue Road

easterly to the Yuba County line and westerly to the Colusa County line and south of a line extending along Clark Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 3. All of Yolo County and that portion of Sutter County south of a line extending along Bogue Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 4. The counties of Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.

District No. 5. All of Butte County, and that portion of Sutter County north of a line extending along Clark Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 6. Yuba County.

District No. 7. The counties of Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare and all other counties not included in Districts 1, 2, 3, 4, 5 and 6.

(b) *Voting procedures*—(1) *Independent producers.* Prior to March 8 of each election year, the Committee shall cause a meeting to be held, in each of the election districts established pursuant to § 993.28(a) for the purpose of obtaining names of proposed candidates for nomination to the Secretary for selection as members and alternate members for the respective districts. Each such candidate must be a producer in the district for which he is proposed. Prior to March 15 of that election year, the Committee shall prepare for each district and mail to each independent producer of record in such district a ballot as prescribed in § 993.28(a). Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district he shall elect in which of such districts he will vote and notify the Committee as to his choice. In order to be counted, such a mail ballot must be executed and returned to the Committee postmarked not later than the following March 31. One nominee for member and one nominee for alternate member for each district shall be submitted to the Secretary by the Committee on the basis of those re-

ceiving the plurality of the mail ballots cast for the respective positions in the particular district. Returns shall be considered in light of the voting by each district separately.

(2) *Independent handler nominees.* (i) Prior to March 15 of each election year, the Committee shall notify each independent handler of record of the group of independent handlers in which he has been classified pursuant to the provisions of § 993.28(c) and of the number of independent handler positions on the Committee for the ensuing term of office pursuant to the provisions of § 993.24 (b) and (c). Prior to April 1 of each election year, each of the two independent handlers classified in the group specified in § 993.28(c)(1) shall notify the Committee in writing of his nominee for member and nominee for alternate member as prescribed therein.

(ii) In any election year in which four member positions and four alternate member positions are assigned to independent handlers for the ensuing term of office, the Committee shall, prior to April 1 of such year, cause to be held a meeting of the three independent handlers classified in the group specified in § 993.28(c)(2) and a separate meeting of all other independent handlers classified in the group specified in § 993.28(c)(3). Each group at its meeting shall, from among that group, elect one member nominee and one alternate member nominee by plurality vote. Each handler present at the meeting of his group shall be entitled to one vote for a candidate for each position assigned to that group.

(iii) In any election year in which only three member positions and three alternate member positions are assigned to independent handlers for the ensuing term of office, the Committee shall, prior to April 1 thereof, cause to be held a meeting of all independent handlers except those classified in the group specified in § 993.28(c)(1). At such meeting one member nominee and one alternate member nominee shall be elected in accordance with the applicable provisions of § 993.28(c).

[47 FR 7389, Feb. 19, 1982, as amended at 55 FR 5571, Feb. 16, 1990; 59 FR 8518, Feb. 23, 1994]

GRADE AND SIZE REGULATIONS

§ 993.149 Receiving of prunes by handlers.

(a) *Receiving stations*—(1) *General*. Prunes shall be received by a handler at any receiving station so designated by the Committee. *Receiving station* shall mean any plant of a handler or a dehydrator's premises; this term shall also mean any other place where prunes are normally and usually received by a handler in any considerable volume as ranch deliveries, and at which there are adequate facilities to enable the inspection service to determine whether the prunes meet the applicable grade, size, and condition requirements.

(2) *Receiving at dehydrator*. Any handler may arrange with the committee and the inspection service for the incoming inspection and certification to be based on samples of prunes drawn as prune plums and dehydrated in the same manner as the prunes to which they are referable. Where such arrangement is acceptable to the Committee as permitting the inspection and certification of the prunes to be comparable to an inspection and certification when based on samples drawn as prunes, such certification shall be acceptable for the purposes of this section if the inspector further certifies that the dehydration process of the prunes being certified resulted in prunes eligible to be received under the terms and conditions of this part.

(b) *Inspection stations*. Prunes shall be inspected only at inspection stations established by the inspection service with the concurrence of the Committee. *Inspection station* shall mean a centralized station and any receiving station other than a handler's plant or a dehydrator's premises.

(c) *Incoming inspection*—(1) *General*. Upon any producer or dehydrator delivering prunes to a handler, the handler shall issue to the inspection service an identification tag showing the name and address of such producer or dehydrator, the date of delivery, the county of production, the number and type of containers, the approximate net weight of the prunes, the place where the prunes are to be inspected, and any other information necessary to identify

such prunes to the satisfaction of the inspector and the Committee. For each such delivery, the handler shall issue to the producer or dehydrator a door receipt or weight certificate showing the name and address of the producer or dehydrator, the weight of the delivery, and any other information necessary to identify the delivery. Such information shall be available to the inspector and the Committee. Each lot shall be sampled separately and as soon as practicable following delivery. The handler shall supply any necessary information together with any assistance needed by the inspector in drawing samples including the dumping of containers.

(2) *Certification*. Following inspection of a lot not returned to the producer or dehydrator, the handler shall require the inspection service to issue, in quintuplicate, a certificate containing at least the following information: (i) The place where samples were drawn and the date and place of inspection; (ii) the name and address of the producer or dehydrator, the handler, and the inspection service; (iii) the variety of the prunes, the county in which such prunes were produced, the number and type of the containers thereof, the net weight of the prunes as shown on the applicable door receipt or weight certificate, together with the number of such receipt or certificate, and the contract or account number under which the prunes were delivered; (iv) whenever applicable, the percentage by weight of undersized prunes in the lot; (v) with respect to the balance of the lot, the inspector's computation of the percentage, by screen size of prunes and in the aggregate, of each group or combination of groups of defects for which a maximum tolerance is in effect; (vi) whether the prunes in the lot, exclusive of any undersized prunes, are standard or substandard; (vii) the inspector's computation of the percentage of weight of each screen size and in the aggregate, of offgrade prunes (those defective pursuant to § 993.97) necessary to be removed therefrom in order for the remainder in each screen size and in the aggregate to be standard prunes, and (viii) the average size count of prunes of each screen size and of the aggregate: *Provided*, That whenever an

undersized prune regulation is in effect for the crop year, the average size count shall be of all prunes except undersized prunes in the lot, by screen size and in the aggregate. The handlers shall require the inspection service to furnish promptly the producer or dehydrator with one copy of the certificate and the handler with two copies.

(d) *Conditional provisions*—(1) *Wet or slack-dry prunes*. Any prunes delivered to a handler by a producer or dehydrator which an inspector determines have not been properly dried and cured in original natural condition, or which show evidence of the addition thereto of water, may be held by the handler for the account of the producer or dehydrator for conditioning by further drying or dehydration: *Provided*, That such prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated as properly dried and cured, or returned to the producer or dehydrator. The certificate shall show, in addition to other inspection requirements, that the conditioning was performed and indicate the net weight after conditioning.

(2) *Prunes with active insect infestation*. Any prunes delivered to a handler which an inspector determines are not free from active insect infestation, may be returned to the producer or dehydrator or may be held by the handler for the account of the producer or dehydrator for conditioning by fumigation: *Provided*, That such prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated to show, in addition to other inspection requirements, performance of fumigation and freedom from active infestation.

(3) *High moisture content prunes*. The delivery of any high moisture content prunes to a handler by a producer or dehydrator shall be reported promptly by the handler to the inspection service. The inspection service shall be requested to submit a report to the committee of each such delivery which shall contain the following information: (i) The date and place of the delivery; (ii) the name and address of the producer or dehydrator, the handler,

and the inspection service; and (iii) the variety of the high moisture content prunes, the county in which they were produced, and their net weight as shown on the door receipt or weight certificate, together with the number of such receipt or certificate. Any handler who, subsequent to delivery to him of high moisture content prunes, elects to dry or dehydrate them or any portion thereof to a point where they are capable of being received by such handler shall, prior to proceeding with such drying or dehydration, notify an inspector of the inspection service of his election, and the same procedure shall apply as set forth in paragraph (d)(1) of this section. For each day on which a handler processes and packages high moisture content prunes, he shall furnish promptly to the inspector a signed statement and one copy showing the handler's name and address and the net weight of the total tonnage of high moisture content prunes processed and packaged by him on that day. The handler shall furnish promptly to the inspector two copies of the shipping or disposition order or other documents which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. One copy of each document so furnished shall be required to be forwarded to the committee. Upon request of the committee a handler shall, within ten days thereafter, file with the committee a signed report on Form PMC 3.1 "Report of High Moisture Content Prunes" which shall contain the following information: (i) The date and the name and address of the handler; (ii) the total tonnage of high moisture content prunes delivered to the handler during the crop year to the date of the report; (iii) the total tonnage of high moisture content prunes shipped or otherwise disposed of by the handler during such period; (iv) the total tonnage of high moisture content prunes delivered to the handler during such period which were dried or dehydrated and received as prunes by the handler; and (v) the total tonnage of high moisture content prunes in the handler's possession on the date of the report.

(4) *Return of prunes to producers and dehydrators.* Any lot of prunes delivered to a handler by a producer or dehydrator may be returned to the producer or dehydrator prior to an inspection thereof. Any lot of prunes so delivered whose identity has been maintained may be so returned following an inspection thereof, except prunes which have been size graded or sorted by the handler, resulting in a segregation of defects. Prunes which have been sorted for the producer or dehydrator, the identity of which have been maintained to the satisfaction of the inspector and the Committee, may be resubmitted for inspection in not more than three new lots, equal in weight to the original lot, and the applicable inspections shall supersede the original inspection.

[26 FR 8278, Sept. 2, 1961, as amended at 33 FR 11812, Aug. 21, 1968; 33 FR 12033, Aug. 24, 1968; 33 FR 14172, Sept. 19, 1968; 35 FR 11380, July 16, 1970; 37 FR 15980, Aug. 9, 1972; 39 FR 30343, Aug. 22, 1974; 43 FR 40199, Sept. 11, 1978; 48 FR 57261, Dec. 29, 1983]

§ 993.150 Disposition of prunes by handlers.

(a) *Inspection stations.* An inspection station shall be any plant of a handler, and any other place where he handles prunes.

(b) *Outgoing inspection.* Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of natural condition prunes or of processed prunes unless he has, prior to such shipment or final disposition, had them inspected and obtained a certificate showing that such prunes meet the effective minimum standards. Such inspection shall be made during that portion of the final preparation of the prunes for shipment or other final disposition as will permit proper sampling, whether in-line or floor inspection, and no handler shall perform such final preparation unless an inspector is present. The handler shall furnish promptly to the inspector a copy of the shipping or disposition order or other documents, which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. For the prunes inspected each day which meet the applicable minimum grade and size require-

ments for standard prunes, or standard processed prunes, the handler shall cause the inspector to issue in triplicate a signed certificate containing the following information: (1) The date and place of inspection; (2) the name and address of the handler and of the inspection service; (3) the number and size of packages or the net weight of prunes; (4) the number of the worksheet or worksheets on which the inspector's computations and results of tests are recorded; and (5) a statement that the prunes meet the effective minimum standards for standard prunes, or standard processed prunes, as the case may be.

(c) *Interhandler transfers.* With the exception of those prunes held by a handler pending their disposition pursuant to § 993.49(c) and those prunes held by him for the account of the Committee pursuant to § 993.57, a handler may transfer prunes to another handler within the area. Any such interhandler transfer may be without the transferring handler having an inspection made as provided for in § 993.51: *Provided*, That before each such transfer the transferring handler shall: (1) Give written notice of the transfer to the inspection service including the proposed date of the transfer, the names of the handlers and, by plant designation, the present location and the destination of the prunes, the number of containers, variety, size designation, and total net weight of the prunes, and the manifest or billing number; and (2) receive from the inspection service a DFA Form P-5 "Shipping Inspection Report and Certificate" marked "Interhandler Transfer Report" on which the inspection service recorded the information furnished by the transferring handler. The transferring handler shall sign the "Interhandler Transfer Report" including all copies thereof that were received from the inspection service, and forward the signed original and one copy to the receiving handler at the time of the interhandler transfer. Upon receipt of the transferred prunes, the receiving handler shall enter on both the original and the copy the date he received the prunes, sign the original, and immediately forward it to the inspection service. The transferring handler shall cause the inspection service

to promptly report the transfer to the Committee. As provided in § 993.50(f), the receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of §§ 993.50 and 993.51.

(d) *Tolerances for non-French prunes.* Any lot of standard prunes or standard processed prunes containing more than 2 percent by weight of non-French prunes shall be disposed of only in prune product outlets as prescribed in § 993.50(c) unless the non-French prunes therein have an average count of 40 or less per pound and unless in a 100-ounce sample of the lot, the count per pound of 10 ounces of the smallest prunes in the sample does not vary from the count per pound of 10 ounces of the largest prunes in the sample by more than 35 points. A lot shall be deemed to exceed the 2 percent tolerance for non-French prunes whenever an inspection shows such prunes exceed 2 percent in any four consecutive sampling units of two tons or less or, if less than four such units are sampled, in such lesser number of units.

(e) *Prunes which fail to meet minimum standards—(1) Committee's approval of disposition—(i) General.* Those defective prunes accumulated by a handler by removing them from standard or substandard prunes, and those prunes received or held by a handler which fail to meet the applicable minimum standards and are held for disposition without removal of defective prunes in excess of maximum tolerances, may only be used, if within the tolerances prescribed in § 993.97 II. C. (1), (2), and (3), for prune products, or if any such tolerances are exceeded and any live infestation corrected by fumigation, for non-human consumption or be destroyed. In order to insure that all such prunes are shipped or otherwise disposed of in accordance with § 993.50(e), no handler shall during any crop year ship or otherwise make final disposition of any such prunes, other than prune waste subject to daily non-human disposition for sanitation purposes, unless prior thereto he had obtained during that crop year (except as otherwise provided in paragraph (e)(1)(iii) of this section) the Committee's approval of his application to do so.

(ii) *Application for approval.* The handler's application to ship or otherwise make final disposition of any such prunes shall be submitted on Form PMC 2.2 "Application for Permission to Dispose of Substandard Prunes". If the prunes are for shipment, the application shall set forth: (a) The name and address of the handler's vendee and the name and address of the consignee whether the same as or different from the vendee; (b) the particular use to be made of the prunes; (c) if such use is to be by a person other than the handler's vendee or the consignee, the name and address of such user; and (d) the crop year or the period within, or the portion of, the crop year during which shipments are to be made. When the use or the name and address of the consignee or user are not known by the handler, the handler shall arrange for the submission of such information to the Committee. If use is to be by the handler, the application shall so indicate and shall set forth all applicable information. Each application for shipment shall be limited to the handler's vendee and the consignee if different from the vendee, and to a specific user and use, and may be open as to quantity: *Provided, That,* when the use or name and address of the user are not known by the handler, the application shall include the quantity of prunes to be shipped and be limited to that quantity. Each application for final disposition for a particular use by the handler shall be limited to such handler and use.

(iii) *Approval of applications.* The Committee's approval of a handler's application shall be transmitted to the handler on Form PMC 2.3 "Permission to Dispose of Substandard Prunes". In approving an application, the Committee shall specify the crop year, or the period within or the portion of the crop year, for which the approval is granted: *Provided, That,* the Committee may approve in July any such application that is submitted during that month by the handler for shipment or other final disposition of the prunes covered thereby in the succeeding crop year. When the use or the name and address of the user or consignee are not known to the handler, the Committee shall not approve

the application until it has been informed as to such use and user and consignee of the prunes.

(iv) *Disapproval of applications; or revocation of approved applications.* In acting on an application, the Committee may disapprove the application when: (a) The application does not conform with the requirements of paragraph (e)(1)(ii) of this section; (b) the Committee has cause to believe that the prunes covered by the application will not be shipped or disposed of in accordance with the application; or (c) the handler, or any of the parties involved in the proposed shipment or disposition, had shipped or made other disposition of prunes covered by a previously approved application inconsistent with that application. The Committee may for cause revoke a handler's previously approved application if he ships or makes other disposition inconsistent with such application. Whenever a user uses prunes inconsistent with an approved application, the Committee may for cause revoke such application, and such other approved applications applicable to such user as the Committee deems necessary to assure that the prunes covered by such applications will not be used in a manner inconsistent with those applications or the order. The Committee shall notify the handler in writing of each disapproval and each revocation.

(v) *Evidence of non-human disposition.* Whenever defective or substandard prunes or prune waste are shipped to or otherwise disposed of in non-human consumption outlets, or destroyed, the handler shall furnish the Committee with a copy of the shipping document or other documentary evidence of the disposition as may be satisfactory to the Committee and at such times as the Committee may direct.

(vi) *Books and records.* Each handler who ships or otherwise disposes of defective or substandard prunes or prune waste shall make available for examination by the Committee, at his business office at any reasonable time during business hours, copies of all applicable purchase orders, sales contracts, or disposition documents, together with any further information which the Committee may deem necessary or desirable to enable it to determine

whether such prunes or prune waste have been or will likely be utilized as authorized.

(2) *Out of the area shipments.* Whenever substandard prunes for human consumption are packed in closed containers, and if for shipment outside the area they shall be so packed, each such container shall be clearly marked "For Manufacturing Purposes Only". Whenever substandard prunes restricted to non-human usage are shipped in closed containers, each such container shall be clearly marked "For Non-Human Usage". In each instance, the letters shall be of reasonable prominence and in a conspicuous place on the container.

(3) *Inspection of substandard prunes.* Each handler shall cause substandard prunes, for use in prune products, to be inspected (prior to disposition or shipment by a handler) by an inspector, and that such inspector issue, in triplicate, a signed clearance certificate (for the preparation of which the handler shall make available to the inspector the necessary data) containing the following information: (i) The date and place of inspection and clearance; (ii) the name and address of the inspection service and of the handler; (iii) the number and kind of packages, the net weight, and the adequacy of the marking; (iv) the lot number or shipping or disposition order number; (v) the committee's approval number; (vi) the destination; and (vii) the actual percentage of off-grade prunes of each group, or combination of groups, of defects in excess of the then current tolerances for standard prunes or standard processed prunes.

(f) *Pitted prunes*—(1) *For human consumption as such.* (i) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless the lot, before pitting, met (A) the applicable minimum standard set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes, and (B) the requirements specified in § 993.50 (c) and (d).

(ii) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless these

prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(ii), pitted prunes means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(iii) No handler shall ship or otherwise make final disposition of any lot of macerated prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(iii), macerated prunes means prunes with the pit removed that are characterized by a flattened appearance with slightly more skin breaks where the pit has been removed than with pitted prunes.

(2) *For use in prune products.* Any lot of substandard prunes, whether natural condition or processed, if within the applicable tolerances prescribed in § 993.97 II C (1), (2), and (3), may be pitted and shipped or disposed of for use and used in prune products for human consumption: *Provided*, That prior to shipment or other final disposition by handler, such prunes have lost their form and character as prunes to the satisfaction of the inspector and the committee. An inspection certificate on such lot shall not be issued until the inspector has determined that the prunes therein have lost their form and character as prunes. Disposition of pitted prunes by handlers for use in prune products shall be in accordance with the applicable provisions of paragraph (e) of this section.

(g) *Disposition of undersized prunes—*
(1) *Application for and approval of disposition.* Undersized prunes accumulated by a handler pursuant to section 993.49(c) shall be disposed of in non-human consumption outlets during the crop year in which the prunes establishing such obligations were received from producers or dehydrators, or such later date that a handler may request

in a notice, filed with the Committee at least 30 days prior to July 31 of the year of accumulation: *Provided*, That, such handler has made a bona fide effort to dispose of its undersized prunes as demonstrated by the shipment of at least 65 percent of its undersized obligation by May 31; such handler has a sufficient quantity of undersized prunes held in storage to meet its remaining obligation; and the extension of time requested is not later than 60 days beyond the end of the crop year. Prior to making any such disposition, the handler shall obtain the Committee's approval of his application to do so. The handler's application to ship or otherwise make final disposition of any such undersized prunes shall be submitted on Form PMC 2.21 "Application for Permission to Dispose of Undersized Prunes" which shall set forth: (i) The name and address of the handler's vendee and the name and address of the consignee whether the same as or different from the vendee; (ii) the particular use to be made of the prunes; (iii) if such use is to be by a person other than the handler's vendee or the consignee, the name and address of such user; and (iv) the crop year or the period within, or portion of, the crop year during which shipment or other disposition is to be made. When the use or the name and address of the consignee or user are not known by the handler, the handler shall arrange for the submission of such information to the Committee. If use is to be by the handler, the application shall so indicate and shall set forth all applicable information. Each application for shipment shall be limited to the handler's vendee and the consignee, if different from the vendee, and to a specific user and use. Each application for final disposition for a particular use by the handler shall be limited to such handler and use. The Committee's approval of a handler's application shall be transmitted to the handler on Form PMC 2.31 "Permission to Dispose of Undersized Prunes." In approving an application, the Committee shall specify the crop year or the period within, or the portion of, the crop year for which the approval is granted. When the use or name and address of the user or consignee are not known to

the handler, the Committee shall not approve the application until it has been informed as to such use and user and consignee of the prunes. The requirements of § 993.150(e)(1)(iv) (except item (a) thereof), (v), and (vi) with regard to disapproval of applications or revocation of approved applications, evidence of nonhuman disposition, and the maintenance of books and records, applicable to prunes which fail to meet minimum standards, shall also apply to undersized prunes.

(2) *Documentation of disposition of undersized prunes*—(i) *Inspection and certification*. The handler shall cause an inspection to be made of each lot of undersized prunes prior to shipment or other disposition to determine whether such prunes meet the applicable requirements prescribed with respect to undersized prunes. After such determination, the handler shall cause a signed inspection certificate applicable to such prunes to be forwarded promptly to the Committee.

(ii) *Documentation of shipment or other disposition*. For each quantity of undersized prunes so shipped or otherwise disposed of, the handler shall promptly forward to the Committee one copy of the applicable bill of lading, truck receipt, or related documentation of disposition which shall show: (a) The name of the consignee; (b) the Committee approval number; (c) the destination by name and address of the person designated to receive the prunes; (d) the date of shipment or other disposition; (e) the inspection certificate number; (f) the net weight of the prunes; (g) the weight certificate number; and (h) identification of the prunes as undersized prunes.

(iii) *Certification or receipt*. The handler shall forward with each quantity of undersized prunes disposed of a certification form in triplicate, Form PMC 4.71 "User's Receipt of Dried Prunes for Nonhuman Usage" on which the handler shall have entered the following applicable information: (a) The inspection certificate number; (b) the Committee approval number; (c) the shipping or other disposition document number; (d) the name of the carrier; (e) the date of shipment or other disposition; and (f) the license or car number of each carrier unit, if applicable, used

in the movement of the prunes to the destination of disposition or usage. The handler shall cause, either directly or through the vendee or consignee, the user of the prunes to certify on Form PMC 4.71 the receipt by him of the applicable prunes and to promptly forward the original thereof to the Committee. Such certification shall set forth the location where the prunes were received, the date of such receipt, the name and address of the person who will use or otherwise dispose of the prunes, and the signature and authority of the certificate to act for the user.

(iv) *Certification of usage*. The handler shall cause, either directly or through the vendee or consignee, the user of the prunes to certify, and forward to the Committee, one copy of Form PMC 4.71, following use or disposition thereof, that the prunes have been used or otherwise disposed of, the date and location at which use or other disposition took place, the name and address of the user, the signature and authority of the certificant to act for the user, and the date of his certification.

(3) *Tolerances permitting a deviation in prune sizes from applicable undersized openings*—(i) *Undersized French prunes*. Whenever an undersized regulation specifies an opening of $\frac{23}{32}$ of an inch for French prunes, any quantity of French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 15 percent by weight of prunes which do not pass freely through a round opening $\frac{24}{32}$ of an inch in diameter. Whenever an undersized regulation specifies an opening of $\frac{24}{32}$ of an inch in diameter for French prunes, any quantity of French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 12 percent by weight of prunes which do not pass freely through a round opening $\frac{26}{32}$ of an inch in diameter.

(ii) *Undersized non-French prunes*. Whenever an undersized regulation specifies an opening of $\frac{26}{32}$ of an inch for non-French prunes, any quantity of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 10 percent by weight of prunes which do not pass freely through a round opening $\frac{30}{32}$ of

an inch in diameter. Whenever an undersized regulation specifies an opening of $\frac{30}{32}$ of an inch in diameter for non-French prunes, any quantity of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 12 percent by weight of prunes which do not pass freely through a round opening $\frac{32}{32}$ of an inch in diameter.

[26 FR 8280, Sept. 2, 1961, as amended at 27 FR 458, Jan. 17, 1962; 29 FR 2331, Feb. 11, 1964; 33 FR 14172, Sept. 19, 1968; 35 FR 5108, Mar. 24, 1970; 35 FR 11381, July 16, 1970; 37 FR 15980, Aug. 9, 1972; 40 FR 52838, Nov. 13, 1975; 48 FR 57261, Dec. 29, 1983; 57 FR 56243, Nov. 27, 1992; 58 FR 13698, Mar. 15, 1993; 59 FR 10228, Mar. 3, 1994]

RESERVE CONTROL

§ 993.156 Application of reserve percentage.

The reserve obligation of each handler shall be determined by applying the reserve percentage to the weight of prunes in each lot, after deducting the weight of prunes in such lot shown as a percentage on the applicable inspection certificate as necessary to be removed therefrom pursuant to § 993.49(c), in such manner as may be prescribed in such reserve control regulation established for the crop year in which such lot is received by a handler from a producer or dehydrator.

[30 FR 13311, Oct. 20, 1965]

§ 993.157 Holding and delivery of reserve prunes.

(a) *Sales and deliveries.* Committee sales and deliveries of reserve prunes from the holdings of any handler shall not exceed the quantity of reserve prunes required to be held by him. The reserve prune holding requirement of the handler shall be reduced by the tonnage so sold or delivered.

(b) *Assistance to handlers.* As assistance to handlers, the committee shall furnish each handler a monthly tabulation, beginning as soon as possible after the start of the crop year, showing his reserve obligation and holding requirement based on records on file with the committee.

(c) *Failure to hold and deliver reserve prunes in accordance with reserve obligation.* In the event a handler fails to

hold for the committee and deliver his total reserve prune obligation in any category and is unable to rectify such a deficiency with salable prunes, he shall compensate the committee in an amount computed by multiplying the pounds of natural condition prunes so deficient by the applicable values established by the committee: *Provided*, That the remedies prescribed herein shall be in addition to, and not exclusive of, any of the remedies or penalties prescribed in the act with respect to noncompliance. The determination of any such deficiency shall include application of any tolerance allowance for shrinkage in weight, increase in the number of prunes per pound, and normal and natural deterioration and spoilage which may then be in effect.

(d) *Excess delivery of prunes to the committee.* In the event a handler delivers to the committee as reserve prunes a quantity of prunes in excess of his holding requirement for reserve prunes, the committee shall make such practical adjustments as are consistent with this part and this may include compensating the handler for such excess (nonreserve prunes) by paying to him the proceeds received by the committee for such excess.

(e) *Holding reserve prunes on other than a handler's premises.* No handler shall hold reserve prunes on the premises of another handler, or in approved commercial storage other than on his own premises, unless prior thereto he notifies the committee in a certified report on Form PMC 5.1 "Notice of Proposed Intent to Store Reserve Prunes" which shall contain at least the following information: (1) The date and the name and address of the handler; (2) the name and address of the person on whose premises the reserve prunes will be stored for the handler; (3) the approximate quantity to be so stored and the exact location and description of the storage facilities; and (4) the proposed date that such storage will begin. The report shall be accompanied by a signed statement by the persons on whose premises the reserve prunes are to be stored agreeing to hold such prunes under conditions of proper storage and further agreeing to permit access to such premises by the

committee at any time during business hours for the purpose of examining or taking delivery of such prunes in accordance with the provisions of this part. No handler shall be permitted to hold reserve prunes on any premises outside the area.

(f) *Exchange of salable prunes for reserve prunes.* No handler shall exchange salable prunes for reserve prunes unless he has entered into a sales agreement authorized pursuant to § 993.65(b) whereby the value of any such exchange, and payment therefor to the committee, shall be determined.

(g) *Delivery by nonsignatory handlers.* Any handler not signing the sales agreement authorized pursuant to § 993.65(b), shall deliver to the Committee, upon demand, the total weight of his reserve obligation by such variety, grade, and size categories, and at the count per pound for each size category as is required by the reserve control regulation of the applicable crop year. Such deliveries of prunes may be either graded prunes or any lot of ungraded prunes, or portion thereof, identifiable to the satisfaction of the committee as being in the same form as when received: *Provided*, That the percent of standard prunes in each lot shall be taken into account but with respect to any lot of graded prunes, no credit shall be given to the standard obligation of the handler if in a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes exceeds the count per pound of 10 ounces of the largest prunes by more than 45 prunes per pound.

[33 FR 19162, Dec. 24, 1968; 48 FR 57261, Dec. 29, 1983]

§ 993.158 Deferment of reserve withholding.

Any handler who desires to defer withholding pursuant to the provisions of § 993.58 shall notify the committee on Form PMC 9.1, "Notification of Desire for Deferment of Reserve Withholding", containing at least the following information: (a) The date and the name and address of the handler; (b) the total salable prunes acquired or under contract with producers and dehydrators; (c) the period for which deferment is requested; and (d) the tonnage of reserve prunes, by categories,

on which deferment is requested. The notification shall be accompanied by the undertaking and bond or bonds required by § 993.58. No handler shall defer withholding of reserve prunes until he has filed the required undertaking and bond or bonds with the committee and has received its acceptance.

[30 FR 13311, Oct. 20, 1965; 48 FR 57261, Dec. 29, 1983]

§ 993.159 Schedule of payments and conditions.

(a) *Rate of payment for necessary services.* Each handler shall, with respect to reserve prunes held by him for the account of the committee pursuant to § 993.57, be paid at the rate of \$25 per ton (natural condition weight) for necessary services rendered by him in connection with such prunes so held during all or any part of the crop year in which the prunes were received from producers or dehydrators. Such amount shall, together with the additional payments, as applicable, provided in this section, be in full payment for the costs incurred in connection with but not being limited to, the following services: Inspection, receiving, storing, grading, and fumigation. The costs include, but are not limited to:

(1) Acquisition costs, which include those for salaries, commission, or brokerage fees, transportation and handling between plants and receiving stations, inspection, and other costs, including container expense, incidental to acquisition or storage;

(2) Direct labor costs, which include those for receiving, grading, preliminary sorting and storing (including that performed by the handler at the receiving station), and loading for shipment or other delivery to the committee or its designee; and

(3) Plant overhead costs, which include those for superintendence, indirect labor, fuel, power and water, taxes and insurance on facilities, depreciation and rent, repairs and maintenance, factory supplies and expense, and employee benefits (payroll taxes, compensation insurance, and other such costs).

(b) *Reimbursement for required insurance costs.* Each handler holding reserve prunes for the account of the

Committee shall maintain proper insurance thereon, including fire and extended coverage, in valuations (according to grade and/or size) established by, or acceptable to, the Committee for the particular crop year. The Committee shall reimburse the handler for the actual costs of such insurance. Prior to the receipt of reserve prunes at the beginning of each crop year, the handler shall certify to the Committee and the Secretary, on Form PMC 4.5, that he has a fire and extended coverage policy fully insuring all reserve prunes received by him during such crop year. Such certification shall contain the following information: (1) The name and address of the handler; (2) the location(s) where reserve prunes will be held for the account of the Committee and the premium rate per \$100 value per annum at each location; (3) the value per ton at which the reserve prunes are insured; and (4) the name and address of the insurance underwriter.

(c) *Certain additional payments in connection with the holding of reserve prunes for the account of the Committee.* (1) Whenever a handler is directed by the committee to move and dump containers or reserve prunes held by him for the account of the committee for the purpose of causing an inspection to be made of the prunes, as provided in § 993.75, but without taking delivery of the prunes at that time, the handler shall be paid for such services at the rate of \$2.50 per ton (natural condition weight).

(2) Commencing with 1968-69 crop year reserve prunes, each handler holding reserve prunes for the account of the committee beyond the end of the crop year in which such prunes were received from producers or dehydrators shall be paid as follows:

(i) For storage and necessary fumigation:

(a) \$2 per ton during all or any part of the first 3 months of the succeeding crop year;

(b) \$1 per ton during all or any part of the second 3 months of the succeeding crop year;

(c) 25 cents per ton during all or any part of the third 3 months of the succeeding crop year; and

(d) 25 cents per ton during all or any part of the fourth 3 months of the succeeding crop year.

(ii) \$3 per ton for bin rental during all or any part of the succeeding crop year.

(iii) For insurance as prescribed in paragraph (b) of this section.

(d) *Certain additional payments in connection with the delivery of reserve prunes to the committee or its designee.* (1) Whenever a handler is directed by the committee to deliver to it or its designee reserve prunes in natural condition, the committee shall furnish the handler with the containers in which to deliver the prunes, or reimburse the handler, at cost, for any containers which he furnishes pursuant to an agreement with the committee.

(2) Whenever the committee arranges with a handler for the reserve prunes delivered to it or its designee to be in processed and packaged condition, the committee shall reimburse the handler at the agreed rate, determined by the committee to be reasonable, for the processing, container, and packaging costs.

[31 FR 5751, Apr. 14, 1966, as amended at 34 FR 19704, Dec. 16, 1969; 35 FR 11381, July 16, 1970; 48 FR 57261, Dec. 29, 1983]

VOLUNTARY DIVERSION

§ 993.162 Voluntary prune plum diversion.

(a) *Quantity to be diverted.* The Committee shall indicate the quantity of prune plums that producers may divert pursuant to § 993.62 whenever it recommends to the Secretary that diversion operations for a crop year be permitted. The Committee shall compute the dried weight equivalent of prune plums so diverted on a dryaway basis in accordance with the following schedule:

(1) For prune plums of French variety produced in the counties of Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Siskiyou, Solano, Sonoma, and Trinity, 1 pound of dried prunes for each 2.6 pounds of prune plums diverted;

(2) For prune plums of French varieties produced in the counties of Alameda, Monterey, San Benito, Santa Clara, Santa Cruz, San Francisco, and

San Mateo, 1 pound of dried prunes for each 2.75 pounds of prune plums diverted;

(3) For prune plums of French varieties produced in the counties of Amador, Butte, Colusa, Contra Costa, Glenn, Sacramento, Shasta, Sutter, Tehama, Yolo, and Yuba, 1 pound of dried prunes for each 3 pounds of prune plums diverted;

(4) For prune plums of French varieties produced in the counties of Fresno, Merced, San Joaquin, San Luis Obispo, Stanislaus, Tulare, and all of the counties in the area not included in paragraphs (a)(1), (2), and (3) of this section, 1 pound of dried prunes for each 3.25 pounds of prune plums diverted; and

(5) For prune plums of non-French varieties produced in any country in the area, 1 pound of dried prunes for each 3.50 pounds of prune plums diverted.

Whenever diversion operations for a crop year have been authorized by the Secretary, the Committee shall notify producers, dehydrators, and handlers, known to it of such authorization.

(b) *Eligible diversions.* Eligible diversions shall preclude prune plums from becoming prunes and shall be limited to the following methods: (1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee; and (2) leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion. In accordance with § 993.62(c), eligible diversion shall not apply to prune plums which would not, under normal producer practices, be dried and delivered to a handler.

(c) *Applications for diversion*—(1) *By producers.* Each producer desiring to divert prune plums of his own production shall, prior to diversion, file with the Committee a certified application on Form PMC 10.1 "Application for Prune Plum Diversion" containing at least the following information: (i) The name and address of the producer; whether the producer is an owner-operator, share-landlord, share-tenant, or cash tenant; and the name and address of any other person or persons sharing

a proprietary interest in such prune plums; (ii) the proposed method of diversion and the location where diversion is to take place; (iii) the quantity and variety of prune plums proposed to be diverted; and (iv) the approximate period of diversion. A deposit fee shall accompany each application and shall be the greater of either \$100 or the amount obtained by multiplying the quantity, in tons, of prune plums proposed to be diverted by \$3.50.

(2) *By dehydrator as agent.* Any producer, or group of producers, may authorize any dehydrator to act as agent to divert harvested prune plums. Prior to diversion such dehydrator shall submit to the Committee with respect to each producer the certified application on Form PMC 10.1 "Application for Prune Plum Diversion" required by paragraph (c)(1) of this section. A deposit fee shall accompany each application and shall be the greater of either \$100 per producer who authorized the dehydrator to act as agent or the amount obtained by multiplying the quantity in tons of prune plums proposed to be diverted by \$3.50: *Provided*, That with respect to any group of four or more producers that authorized the dehydrator to act as agent for the group and the dehydrator so informs the Committee, the deposit fee shall be the greater of either \$200 or the amount obtained by multiplying the aggregate quantity in tons of prune plums proposed to be diverted by the group by \$3.50.

(3) *Receipt of applications.* The Committee shall establish, and give prompt notice of, a final date for receipt of applications for diversion: *Provided*, That if the Committee determines that the total quantity of prune plums covered by applications received by such date is substantially less than the quantity which the Committee has determined pursuant to paragraph (a) of this section, the Committee may provide such additional time for such receipt of applications as it deems appropriate and establish and give prompt notice of such additional time.

(d) *Approval of applications.* No certificate of diversion shall be issued by the Committee unless it had approved the application covering such diversion.

(1) The Committee's approval of an application shall be in writing, and include at least the following: (i) The details as to the method of diversion to be followed; (ii) the method of appraisal to be used by the Committee to determine the quantity of prune plums diverted; (iii) the lesser of either the quantity specified in the the application for diversion as proposed to be diverted, or any modification of that quantity as a result of any Committee proration of the total quantity proposed to be diverted by all producers; and (iv) such other information as may be necessary to assist the applicant in meeting the requirements of this section, including the conditions of proof of diversion under which diverted prune plums shall receive credit for certification.

(2) If the Committee determines that it cannot approve an application it shall notify the applicant promptly. The Committee shall state the reason for failing to approve the application, and request the applicant to submit, if practicable, an amended application correcting the deficiencies in the original application.

(3) The Committee shall establish, and give prompt notice of a final date by which a producer may modify his approved application including changing the proposed method of diversion and the quantity of prune plums proposed to be diverted: *Provided*, That any change in the proposed method of diversion shall include information on the location where such diversion is to take place and shall be accompanied by a payment of \$50 as a service charge, and any increase in the quantity of prune plums proposed to be diverted shall be accompanied by a payment of \$4.50 per ton for such increase, of which \$3.50 shall be the deposit fee and \$1 shall be a service charge.

(4) Whenever an applicant cancels his approved diversion application prior to diversion, no part of the deposit fee covering actual costs incurred in connection with the application shall be refunded except upon approval by the Committee following review of all circumstances in the matter.

(e) *Report of diversion.* (1) When diversion of prune plums has been completed, the diverter (whether producer

or dehydrator as agent of a producer) shall submit the required proof of such diversion to the Committee. When the Committee concludes that diversion has been completed pursuant to the requirements of this section, it shall furnish the producer whose prune plums were diverted with a listing of the total quantity of prune plums concluded to be so diverted: *Provided*, That a producer shall be given credit for any quantity of his prune plums diverted in excess of the quantity approved by the Committee pursuant to paragraph (d) of this section but not in excess of 120 percent of such approved quantity and then only to the extent that such creditable excess is already covered by his applicable deposit fee or such fee is increased by an additional deposit to cover such excess.

(2) Upon completion of the computation of dryaway pursuant to paragraph (a) of this section applicable to the diverter's diversion of prune plums, the Committee shall issue a report of diversion to the producer whose prune plums were diverted for the total quantity, dried weight equivalent, credited for diversion setting forth the computations by which such total quantity was derived.

(f) *Transferable certificate of diversion*—(1) *General.* As hereinafter set forth, transferable certificates of diversion shall be issued by the Committee. Any transferable certificate of diversion issued to a handler that is a cooperative marketing association, or submitted to a handler and accepted by him, shall be returned to the Committee by the handler for credit against the handler's reserve obligation of the crop year in accordance with § 993.57. Such credit shall be based on the amount shown on the certificate, and shall be applied to reduce the handler's holding requirement for such crop year. With respect to such creditable certificate of a handler with a holding requirement prior to issuance or acceptance, as applicable, of the transferable certificate of diversion, such credit shall result in an adjustment downward in the handler's then applicable holding requirement in an amount equal to that computed by applying the applicable salable percentage to the total quantity on such certificate. Any

adjustment in a handler's holding requirement shall not affect his obligation, if any, to continue to hold reserve prunes that are undersized prunes. The term *undersized prunes* shall have the same meaning as prescribed by the Secretary for the then current crop year. If the Committee determines that effective administration of diversion operations requires establishment of a final date for submission of transferable certificates of diversion by producers to handlers, or a final date for return of such certificates by handlers to the Committee for crediting against their reserve obligations, or both, it shall establish such dates.

(2) *Issuance to producers.* Except as provided in paragraph (f)(3) of this section, the Committee shall issue transferable certificates of diversion to each producer diverting prune plums and to whom a report of diversion was issued. Prior to issuance of any such transferable certificate of diversion, the producer shall advise the Committee, in writing: (i) Of the name of the handler to whom the transferable certificate of diversion is to be submitted and who is holding reserve prunes referable to prunes received from such producer; and (ii) how much of the quantity shown on his report of diversion he desires to use in lieu of reserve prunes but not in excess of the quantity of reserve prunes referable to prunes received by the handler from such producer. The Committee shall enter on the transferable certificate of diversion the name of the handler and the quantity covered by the certificate. The transferable certificate of diversion shall be endorsed by the producer and the handler prior to its return to the Committee in order to be credited by the Committee against such handler's reserve obligation. If any portion of the quantity shown on the producer's report of diversion remains unused and he desires to transfer a transferable certificate of diversion covering all or any part of such unused portion to another producer, he shall advise the Committee, in writing, of the name and address of such producer, together with the applicable quantity desired to be covered by the transfer, and, if known, the name of the handler to whom such a transferable certificate is to be sub-

mitted. However, the quantity to be covered by the transfer shall not exceed the quantity of reserve prunes referable to prunes received by the handler from the transferee-producer. The Committee shall enter on the transferable certificate of diversion the names of the transferee-producer and the handler, and the quantity covered by the certificate. Prior to submission of any such transferred diversion certificate to a handler, the transferee-producer shall advise the Committee, in writing, of the name and address of the handler to whom the transferable certificate is to be submitted and who is holding reserve prunes referable to prunes received from such producer. Such transferred diversion certificate shall be endorsed by both producers and the handler in order to be credited by the Committee against such handler's reserve obligation.

(3) *Issuance to a cooperative marketing association.* In connection with prune plums diverted by producers who are members of a cooperative marketing association, the Committee shall, when so requested by the association, issue the applicable transferable certificates of diversion to it. The quantity entered on the report of diversion of a cooperative producer shall be entered on or annexed to the applicable transferable certificate of diversion issued to the association. Such transferable certificates of diversion shall be returned to the Committee by the association endorsed by an authorized officer of the association in order to be credited by the Committee against the association's reserve obligation.

(4) *Applicability of certain payments.* The provisions of §§ 993.59 and 993.159 governing payments to a handler for necessary services rendered by the handler in connection with reserve prunes shall not be applicable to prunes no longer required to be held as reserve prunes due to a downward adjustment by the Committee in the handler's holding requirement on the basis of applicable transferable certificates of diversion returned to the Committee.

(g) *Costs.* Pursuant to § 993.62(g), the costs pertaining to diversion are to be defrayed by payment of fees by the producer or cooperative marketing association to whom a diversion certificate

is issued. After authorized diversion operations for a crop year are completed, the Committee shall ascertain its costs of diversion operations during such crop year. If the total amount represented by the deposit fees which accompanied the applications for diversion exceeds such costs, each producer, and each cooperative marketing association, entitled thereto shall receive a proportionate refund of the net amount. Such refund shall be calculated in the same proportion as the quantity of prune plums diverted by each such producer, and each such cooperative marketing association, is to the total quantity of prune plums diverted: *Provided*, That the Committee may prescribe a minimum charge to cover costs of processing each application for diversion submitted to it.

[35 FR 12323, Aug. 1, 1970, as amended at 36 FR 15039, Aug. 12, 1971; 48 FR 57261, Dec. 29, 1983]

DISPOSITION OF RESERVE PRUNES

§ 993.165 Disposition of reserve prunes.

(a) *General*. For purposes of § 993.65(a)(2), normal outlets for salable prunes (herein referred to as "normal outlets") and outlets noncompetitive with normal outlets for salable prunes (herein referred to as "noncompetitive outlets") are defined in paragraphs (b) and (c) of this section.

(b) *Normal outlets*. *Normal outlets* means all outlets not specifically set forth in paragraph (c) of this section as noncompetitive outlets.

(c) *Noncompetitive outlets*. *Noncompetitive outlets* means (1) the U.S. Government or any agency thereof and any State or local government, except when such outlets are normally serviced through regular commercial trade channels, (2) any foreign government or any agency thereof, except any which normally is serviced through regular commercial trade channels, (3) any foreign country with an average of annual commercial imports of California prunes of less than 5 tons, based on imports during the most recent 5 years, (4) diced prunes for use as an ingredient in, or the manufacture of, food products for human consumption, other than for use in the manufacture

of prune juice, prune concentrate, baby food, puree, butter, jam, and low moisture nuggets, granules, and powder, (5) charities, (6) research or educational activities, and (7) animal feed, distillation, and other salvage use.

[31 FR 5751, Apr. 14, 1966, as amended at 37 FR 5600, Mar. 17, 1972]

REPORTS AND BOOKS AND OTHER RECORDS

§ 993.172 Reports of holdings, receipts uses, and shipments.

(a) *Holdings as of March 31*. Each handler shall, on or before the 15th day of April, file with the committee a signed report of holdings of prunes which have not been inspected or received by him as a handler as of March 31. The report shall show for such prunes the name and address of the producer or dehydrator, the date of each identification tag assigned to such prunes, the numbers and dates of door receipts or weight certificates or any other identifying documents assigned to such prunes, the net weight shown on each, the total net weight of all prunes so held, and the name and address of the handler making the report.

(b) *Receipts by handlers*. Each handler shall file with the committee, for each month, not later than the 5th working day of the next succeeding month, a signed report on Form PMC 11.1, "New Crop Supply and Inbound Prune Report", containing at least the following information: (1) The date, the name and address of the handler, and the period covered by the report; and (2) the total tonnage received during the month from each of (i) producers and dehydrators, (ii) other handlers, including interhandler transfers, and (iii) sources other than producers, dehydrators and other handlers.

(c) [Reserved]

(d) *Shipments by handlers*. Each handler shall file with the Committee for each month, not later than the 5th working day of the next succeeding month, a signed report on Form PMC 12.1, "Reports of Shipments," reporting shipments of prunes during the crop year through the last day of the immediately preceding month. Such report shall contain at least the following information:

(1) The date, the name, and address of the handler, and the period covered by the report;

(2) The poundages of prunes shipped or otherwise disposed of, other than shipments to or for the account of other handlers, as follows: (i) Domestic outlets segregated by uses (including Federal Government agencies); (ii) export markets, segregated by countries; (iii) both domestic and export totals segregated by type of pack (carton, visipak, and other), and (iv) pitted prunes (pitted weight) segregated as to total to domestic outlets and total to export markets;

(3) The total poundage shipped to or for the account of other handlers, including interhandler transfers; and

(4) The total poundage of prunes not covered by, or excluded from, the definition of the term "prunes" (§ 993.5) shipped.

(e) *Holding of reserve prunes.* Upon request of the committee, a handler shall file with the committee, within 10 calendar days thereafter, a certified report on Form PMC 4.1, "Reserve Prunes Held by Handler", containing the following information as of the date specified by the committee in its request: (1) The date and name and address of the handler; (2) the effective date of the report; and (3) the tonnages of reserve prunes physically held by or for the handler, itemized by plants, together with the location of the plants and itemized by the tonnages and average size count by category held at each such plant.

[26 FR 8281, Sept. 2, 1961, as amended at 30 FR 13311, Oct. 20, 1965; 31 FR 14988, Nov. 29, 1966; 33 FR 19162, Dec. 24, 1968; 48 FR 57261, Dec. 29, 1983; 49 FR 1469, Jan. 12, 1984]

§ 993.173 Reports of accounting.

(a) *Independent handler's reports of accounting.* Within 10 days (exclusive of Saturdays, Sundays, and legal holidays) after a handler, other than a non-profit cooperative agricultural marketing association, makes an accounting or settlement with a producer or dehydrator for prunes delivered to him, he shall submit to the committee a copy of the accounting or settlement record, which shall contain the following information: (1) The names and addresses of the producer or dehydrator, any other person having a fi-

nancial interest in the prunes, and the handler; (2) the date of the accounting or settlement; (3) the contract or account number; (4) an itemized statement listing each lot of prunes in the delivery, showing the date received, receiving point, weight certificate, or door receipt number, inspection certificate number, variety, crop year of production, and the net weight, if any, of prunes shown by the applicable incoming inspection certificate to be disposed of for nonhuman consumption in accordance with § 993.150(g); (5) the total net weight of prunes to be set aside for nonhuman consumption, and the total net weight received; and (6) the total net weight of each lot, itemized as to salable and reserve prunes by category as developed from inspection certificates.

(b) *Cooperative marketing associations' reports of accounting.* Upon written notice by the committee, non-profit cooperative agricultural marketing associations which are handlers shall file with the committee within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter a signed cumulative report of the prunes received from its members and any other producers or dehydrators for whom it performs handling services, which shall contain the following information: (1) The name and address of the association and the date of the report; (2) the aggregate net weight of prunes, as shown by the applicable incoming inspection certificates, required to be disposed of for nonhuman consumption in accordance with § 993.150(g); and (3) the total net weight of prunes received, itemized by crop years of production, and itemized as to salable and reserve prunes by category as developed from inspection certificates.

(c) *Carryover and marketing policy information.* Upon request of the committee, a handler shall within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, file with the committee a signed report on Form PMC 14.1 "Report of Carryover and Marketing Policy Information," containing such of the following items of information as may be requested by the committee: (1) The tonnage of prunes held by the handler by size and grade, as of the date specified in the

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committee's request and the tonnage of reserve prunes by size in each category; and (2) the handler's estimate of the tonnage of prunes held by producers and dehydrators from whom the handler received prunes during the current or preceding crop year, of the tonnage and quality and size of prunes expected to be produced by such producers and dehydrators during the current or following crop year, of current prices being received by producers, dehydrators, and handlers, and of the probable trade demand.

[30 FR 13311, Oct. 20, 1965, as amended at 35 FR 11381, July 16, 1970; 37 FR 15981, Aug. 9, 1972; 48 FR 57261, Dec. 29, 1983]

§ 993.174 Records.

Each handler shall maintain such records as are necessary to furnish the reports required to be submitted to the Committee by him under this subpart including, but not limited to, records of all transactions on prunes received, held and disposed of by him, and he shall retain such records for at least two years after the end of the crop year in which the applicable transaction occurred.

[26 FR 8281, Sept. 2, 1961; 26 FR 8483, Sept. 9, 1961. Redesignated at 30 FR 13312, Oct. 20, 1965]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .300 through .399) and "Marketing percentage" regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in the Finding Aids section of this volume.

Subpart—Assessment Rates

§ 993.347 Assessment rate.

On and after August 1, 1998, an assessment rate of \$2.16 per ton is established for California dried prunes.

[63 FR 52961, Oct. 2, 1998]

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Subpart—Undersized Prune Regulation

§ 993.400 Modifications.

Pursuant to the authority in § 993.52, the provisions in § 993.49(c) prescribing size openings for undersized prune regulations are hereby modified to permit larger size openings. For French prunes, any undersized regulation may prescribe an opening of $\frac{23}{32}$ of an inch or $\frac{24}{32}$ of an inch; for non-French prunes, any undersized regulation may prescribe an opening of $\frac{28}{32}$ of an inch or $\frac{30}{32}$ of an inch.

[40 FR 42531, Sept. 15, 1975]

Subpart—Pack Specification as to Size

SOURCE: 26 FR 8281, Sept. 2, 1961, unless otherwise noted.

DEFINITIONS

§ 993.501 Consumer package of prunes.

Consumer package of prunes means *consumer package* as defined in § 993.22.

§ 993.502 Size count.

Size count means the count or number of prunes per pound.

§ 993.503 Size category.

Size category means each of the size categories listed in § 993.515 and fixes the range or the limits of the various size counts.

§ 993.504 In-line inspection.

In-line inspection means inspection of prunes where samples are drawn from a flow of prunes prior to packaging.

§ 993.505 Floor inspection.

Floor inspection means inspection of prunes where samples are drawn from packaged prunes or from unpackaged prunes that are held in packing containers for later packaging.

Agricultural Marketing Service, USDA

§ 993.517

§ 993.506 Lot.

Lot for the purposes of this subpart shall have the same meaning as defined in § 993.104(b) of the Subpart—Administrative Rules and Regulations.

SPECIFICATIONS AS TO SIZE

§ 993.515 Size categories.

For the purpose of this part, the pack specifications prescribed for the packing of prunes in consumer packages shall, subject to the limitation prescribed in § 993.516, be according to those commercially recognized size categories as are listed in paragraph (a) of this section by numerical designation or in paragraph (b) of this section by nomenclature designation.

(a) *Numerical designations.* Each of the following is a numerical size category described by the range of the size counts of prunes per pounds included in the respective size categories expressed as follows or in an applicable equivalent range expressed in the metric system per 500 grams: 15/20, 15/22, 18/24, 20/30, 25/35, 30/40, 35/45, 40/50, 50/60, 60/70, 70/80, 75/85, 80/90, and 90/100.

(b) *Nomenclature designations.* Each of the following is a nonmenclature size category:

- (1) Extra large;
- (2) Large;
- (3) Medium; and
- (4) Small, breakfast, petite, or economy.

(c) *Nomenclature designations defined.* As used in paragraph (b) of this section:

(1) *Extra large* means any size count which falls within the range of 25 to 40 prunes, inclusive, per pound;

(2) *Large* means any size count which falls within the range of 40 to 60 prunes, inclusive, per pound;

(3) *Medium* means any size count which falls within the range of 60 to 85 prunes, inclusive, per pound; and

(4) *Small, breakfast, petite, or economy* means any size count which falls within the range of 85 to 100 prunes, inclusive, per pound.

[26 FR 8281, Sept. 2, 1961, as amended at 49 FR 35930, Sept. 13, 1984]

§ 993.516 Tolerances and limitations.

With respect to in-line inspections and floor inspections, prunes in a par-

ticular lot shall, subject to the other applicable requirements of this section, be considered as being according to a particular size category prescribed in § 993.515 if the average size count of the prunes in such lot falls within the range of the size counts specified for such size category, and the count per pound of 10 ounces of the smallest prunes in a sample of 100 ounces varies from the count per pound of 10 ounces of the largest prunes in such sample by no more than 45 points.

LABELING

§ 993.517 Identification.

The size category of the prunes in any lot shall be clearly marked by the handler on each consumer package of such prunes, on the parts or panels of the package or label which are normally presented in retail display, in terms of the applicable numerical or nomenclature designation prescribed in § 993.515, which designation shall not be lacking in prominence and conspicuousness. Any handler may, at his option, clearly mark on such consumer package additional information describing in numerical terms the average size count, or particular range of size counts, of the prunes in such lot so long as such numerical terms fall within the range of the size counts of the applicable numerical or nomenclature designation and do not tend to be deceptive as to the actual average size count, or range of the size counts, of the prunes in such lot. Descriptive terms other than synonyms of the prescribed nomenclature designation or words of like connotation, describing the style of pack, variety of prune, or other item of commercial significance may also be marked on the consumer package. Prunes in any lot of which the maximum size count is less than 25 shall be clearly marked by the handler in terms of the applicable numerical designation prescribed in § 993.515(a); and the handler may use nomenclature terms descriptive of size other than the nomenclature designations prescribed in § 993.515(b).

[26 FR 8281, Sept. 2, 1961, as amended at 46 FR 38070, July 24, 1981]

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COMPLIANCE

§ 993.518 Compliance.

Whenever the season average price to producers for prunes is below the parity level specified in section 2(1) of the act, no handler shall ship consumer packages of prunes unless such prunes are packed and labeled in accordance with the specifications prescribed in this subpart; and whether prices are above or below parity, no handler shall use the nomenclature designations in § 993.515(b) to describe size categories other than those prescribed pursuant to § 993.515(c).

Subpart—Grade Regulations

§ 993.601 More restrictive grade regulation.

(a) *Incoming and outgoing regulation.* Whenever the estimated season average price to producers for prunes does not exceed the parity level specified in section 2(1) of the act, the minimum standards which handlers' receipts of natural condition prunes are required to meet pursuant to § 993.49(a) shall be the standards specified in §§ 993.49(a) and 993.97(I), and the minimum standards which handlers' shipments or other final dispositions of prunes are required to meet pursuant to § 993.50(a) shall be the applicable standards set forth in § 993.97 *Exhibit A; minimum standards*, except that the following revised tolerance allowances shall apply in lieu of the tolerance allowances prescribed in paragraphs I C(2), II C(3), I C(5) and II C(6) of § 993.97 as follows:

(1) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed fifteen percent (15%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(2) The combined tolerance allowance for mold, brown rot, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%), and, within such tolerance, brown rot shall not exceed three percent (3%).

(b) *Above parity situations.* Whenever the estimated season average price to

producers for prunes exceeds the parity level specified in section 2(1) of the act, the minimum standards set forth in § 993.97 shall apply in their entirety.

[27 FR 7540, Aug. 1, 1962, as amended at 59 FR 38113, July 27, 1994]

§ 993.602 Maximum tolerances.

In lieu of the provision prescribed in I C of § 993.97 that the tolerance allowances prescribed therein shall be on a weight basis, the tolerance allowance percentage for each defect or group of defects in I C of § 993.97 shall be derived by dividing the number of prunes in the applicable sample affected with the applicable defect(s) by the total number of prunes in such sample.

[39 FR 30344, Aug. 22, 1974]

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

DEFINITIONS

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997.1	Secretary.
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QUALITY REGULATIONS

997.20	Incoming regulation.
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ASSESSMENTS

997.51	Assessments.
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REPORTS, BOOKS AND RECORDS

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